

**MINUTES  
HEARING OFFICER  
AUGUST 18, 2015**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

**STUDY SESSION 4:30 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Dean Miller, Planner  
Diane McGuire, Administrative Assistant II  
Julie Scofield, Code Compliance Inspector

**Number of Interested Citizens Present: 5**

- Staff and the Hearing Officer discussed overview and updates to the scheduled cases for this hearing.
- Vanessa MacDonald referred to Agenda Item No. 10 – D.I.M.E. and questioned whether the ZDC requires a use permit for a modeling workshop. Steve Abrahamson, Principal Planner, responded that it does not. It was agreed that only the resale retail portion of this request requires a use permit.

**REGULAR SESSION 5:00 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Dean Miller, Planner  
Diane McGuire, Administrative Assistant II  
Julie Scofield, Code Compliance Inspector

**Number of Interested Citizens Present: 9**

Meeting convened at 5:00 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by September 1, 2015 at 3:00 PM, to the Community Development Department.

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Ms. MacDonald noted that the following item had been removed from today's agenda:

- **Agenda Item No. 2**  
Request approval to abate public nuisance items at the **ELDAH PROPERTY (CM150606)** located at 2240 East Apache Boulevard. The applicant is the City of Tempe.  
**ABATEMENT REQUEST WITHDRAWN**
- **Agenda Item No. 3**  
Request approval to abate public nuisance items at the **ELDAH PROPERTY (CM150607)** located at 2227 East McArthur Drive. The applicant is the City of Tempe.  
**ABATEMENT REQUEST WITHDRAWN**
- **Agenda Item No. 5**  
Request approval to abate public nuisance items at the **KOEHLMOOS FAMILY TRUST PROPERTY (CM150610)** located at 2236 East Apache Boulevard. The applicant is the City of Tempe.  
**ABATEMENT REQUEST WITHDRAWN**
- **Agenda Item No. 6**  
Request approval to abate public nuisance items at the **KOEHLMOOS FAMILY TRUST PROPERTY (CM150611)** located at 2235 East McArthur Drive. The applicant is the City of Tempe.  
**ABATEMENT REQUEST WITHDRAWN**
- **Agenda Item No. 8**  
Request approval for a use permit to allow a tobacco retailer for **FIESTA PLAZA – OASIS VAPE (PL150298)** located at 7520 South Rural Road, Suite No. A4. The applicant is Gianni Martinez.  
**CONTINUED TO SEPTEMBER 1, 2015 HEARING OFFICER**

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1. Vanessa MacDonald noted that the Hearing Officer Minutes for August 4, 2015 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the **WATKINS PROPERTY (CE153309)** located at 3705 South Kenneth Place. The applicant is the City of Tempe.

The property owner was not present at today's hearing.

Julie Scofield, Code Inspector, requested approval of an abatement of the property located at 3705 South Kenneth Place. Notices have been sent to the owner of the property regarding deteriorated landscape, grass, weeds, debris and a deteriorated pool. The property owner was issued a civil citation and failed to appear in court. A 180 day open abatement period is requested. Ms. Scofield noted that although numerous phone messages have been left for the owner, no return calls have been received.

**DECISION:**

Ms. MacDonald approved abatement proceedings for an open abatement period of 180 days for CE153309.

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3. Request approval for a use permit to allow a massage establishment for **SONORAN SERENITY SPA (PL150297)** located at 180 South Ash Avenue. The applicant is Kiera Stroup.

Sherri Lesser, Senior Planner, reviewed this case, stating that the business will occupy a space at 180 South Ash Avenue in the University Square Center. The business previously operated as Vivaldi Salon Suites on the first floor of the Centerpoint Condominium development. The applicant is expanding their business and wishes to relocate to a larger space at University Square Center at Ash and 1<sup>st</sup> Street. Ms. Lesser noted that the site is located in the CC, City Center District.

Kiera Stroup was present to represent this case. She acknowledged her understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that there is a process which involves obtaining the correct licenses and other documentation for a business of this nature. Ms. Stroup responded that she was familiar with the process.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

**DECISION:**

Ms. MacDonald approved the use permit for PL150297 subject to the following conditions:

1. The use permit is valid only after a building permit has been obtained and the required inspections have been completed and a final inspection has been passed.
2. The use permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. The use permit is valid for the Sonoran Serenity Spa and may be transferable to successors in interest through an administrative review with the Community Development Director or designee.
4. Any intensification or expansion of use shall require a new use permit.
5. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit which may result in termination of the use permit.

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4. Request approval for a use permit to allow massage therapy and skin care treatments for **PHYSICIAN'S CHOICE MASSAGE (PL150291)** located at 1840 East Warner Road, Suite 101. The applicant is Devena Riedl.

Dean Miller, Planner, gave an overview of this case, noting that the applicant is seeking a use permit to allow massage therapy and skin care treatments. The site is located at the northeast corner of McClintock Drive and Warner Road in a commercial center, known as McClintock Fountains, with other service oriented businesses.

Ms. MacDonald continued this case to the September 1, 2015 Hearing Officer public hearing, as the applicant, Ms. Devena Riedl, was not present to represent this case and therefore unable to agree to the Conditions of Approval outlined in the staff summary report.

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5. Request approval for a use permit to allow a resale retail store and modeling workshop for **DIVINE INSTITUTE OF MODELING AND ETIQUETTE (D.I.M.E.) (PL150280)** located at 1440 North Scottsdale Road. The applicant is Tani Johnson.

Sherri Lesser, Senior Planner, gave an overview of this case, noting that the applicant is seeking a use permit to for the resale retail portion of the business. There is no use permit required by the Zoning and Development Code to allow modeling/etiquette classes. The proposed use is not a thrift store but customers can donate items to the store and purchase other products available. The site is located north of Weber Drive, south of Hancock Avenue on the west side of Scottsdale Road in a commercial center known as Union Plaza. The business will be open from 8 AM to 8 PM. Ms. Lesser explained that this case had been continued from the August 4<sup>th</sup> Hearing Officer public hearing in order to get updated information from the applicant.

Ms. Tani Johnson (applicant) and Mr. Randy Lange (business partner) were present to represent this case. They acknowledged their understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that there were four (4) individuals present in the audience who wished to speak on this request:

Ms. Darlene Tussing, representing the East Rio Neighborhood Association, spoke in opposition to this request, stating her concern that enough is not understood about the nature of this business and its operation. She also indicated that it was her understanding that all neighbors within a half mile of a proposed business are required to be notified by mail. Mr. Abrahamson responded that all neighborhood associations within 1320 ft. are notified as well as neighbors within 600 ft. of the request.

Ms. Deb Cain Brady, citizen of Tempe, spoke of her concern regarding this request and wondered if the applicant would be sending models to individual homes for purposes other than modeling (i.e. escort service). She explained that in the last few years, businesses with no benefit to the neighborhood had been established.

Ms. Darlene Justus, representing the North Tempe Neighborhood Association, spoke of the community concern regarding this request. She stated her concern regarding stolen merchandise being sold. She also explained that although the applicant had indicated that their business held a non-profit status, she did not find them on the on-line inclusive list of existing non-profits. She questioned they there were actually registered as a non-profit business or were operating as a charity enterprise.

Ms. MacDonald responded that whether the business held a non-profit vs profit status is not part of the Hearing Officer's decision/concern. The decision of the Hearing Officer on whether the request is approved or denied is based on the Zoning and Development Code (ZDC) and General Plan requirements.

Mr. Lane Caraway, representing the Cavalier Hills Neighborhood Association, spoke in opposition to this request. He stated that the applicant(s) had been non-cooperative in responding to the HOA/NA concerns and questions regarding their proposed business. He played a recording based on a message from Mr. Lange and stated that he felt that applicant had behaved in a threatening manner as portrayed by the recorded message. Mr. Caraway stated that it is his responsibility to his neighborhood to obtain information regarding proposed businesses in their area. He stated that he had left messages and had not heard back from the applicants, and that there are too many unanswered questions at this point. He emphasized that their neighborhood has enough problems without adding a business that may be detrimental to the area. Mr. Caraway indicated that he would have liked the applicant to have had a neighborhood meeting to provide more information to the neighbors regarding the nature of the business.

Ms. MacDonald stated that she understood the concerns but would need to base her decision on the letter of intent provided by the applicant(s). She asked Mr. Caraway what he wanted from the applicant(s) in order to provide him with a better level of comfort.

Mr. Caraway reiterated that there are just too many unanswered questions at this point in time.

Ms. MacDonald responded 'what is it that you want to hear'? She agreed that neighborhood outreach is important and wanted to know what specific details Mr. Caraway would want to know about the proposed business.

Mr. Caraway stated that the caliber of attitude sets the tone for how a business/individual will establish itself. How will this business perform its modeling etiquette activities/workshop? How will the resale retail store operate? Is this ministry work?

Ms. MacDonald explained that a neighborhood meeting is not a required part of the use permit request process and is not required by the ZDC. As such, the Hearing Officer cannot compel an applicant to have a neighborhood meeting. She did, however, strongly encouraged the applicant to meet with the neighbors and expressed regret that they had not already done so.

Mr. Caraway stated that the neighborhood is tired of the problems with this shopping center.

Ms. MacDonald recalled the applicant(s) to the podium to respond to the concerns voiced by the neighborhood. She noted that they just want answer and that it is advisable and to the benefit of the business to work with the neighborhood. She asked the applicants if they would agree to a two (2) week continuance to meet with the neighbors regarding their concerns.

Mr. Lange stated that the neighborhood had had plenty of time to contact he and Ms. Johnson regarding their concerns. Ms. Johnson stated that she would like to apologize for any misunderstandings that had occurred. She explained that she is not accustomed to strange people calling her up and asking questions. She did not know who Mr. Caraway was and did not feel comfortable talking to him without knowing his identity. Mr. Lange stated that at this time he would like to respond to Lane Caraway's comments as follows.

- He explained that Tani Johnson was a career nurse who has lived in the neighborhood area for a number of years.
- Both he and Ms. Johnson have a sizeable investment in this business and, before applying for the use permit, felt that they had enough money between them to build this business.
- This business has no sexual connections and will not be an escort service. He asked if they had ever heard of My Sister's Closet which is an upscale concept similar to how their business will operate.
- Both he and Ms. Johnson are agreeable to the additional Condition of Approval No. 7 for a 6 month review of compliance with the Conditions of Approval.
- At some time, down the road, they may want to expand their business an additional 500 s.f.
- They had both observed Tempe Marketplace and consumer interest in similar stores such as Nordstrom Rack, T. J. Maxx and Ross Dress for Less to determine the marketability of their business concept. Mr. Lange stated that Ms. Johnson knows everyone in the used clothing business along the Scottsdale Road area.
- Mr. Lange stated that he feels the etiquette classes will help people in the job market.
- Ms. Johnson noted that the clothing/modeling would not include garments with exposure such as bikinis.
- Ms. Johnson addressed the issue of their non-profit status, however Ms. MacDonald noted that this subject is not part of her decision making process.
- Mr. Lange stated that this is not a pawn shop, only upscale quality items would be sold in the resale shop.
- They are not going to deal with clients who cause trouble or create problems.

Ms. MacDonald stated that the resale/retail store is the focus of this use permit request. It is not her responsibility to approve or deny the modeling workshop as the issue of a use permit for that business is not addressed in the ZDC. The use permit criteria required by the ZDC is specifically related to the resale/retail store.

The applicants agreed to notify Mr. Abrahamson of their opening date once it has been scheduled.

Ms. MacDonald encouraged the applicants to work with the neighborhood for a harmonious relationship.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions.
- There will be no impact to the surrounding area in deterioration or decreased property values.
- The use is compatible with the existing structure and surrounding uses.
- No disruptive behavior will be generated by this use.

**DECISION:**

Ms. MacDonald approved the use permit for PL150280 subject to the following conditions:

1. The use permit is valid only after a building permit has been obtained and the required inspections have been completed and a final inspection has been passed.
2. The use permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit, which may result in termination of the use permit.
4. Any intensification or expansion of use shall require a new use permit.
5. Hours of operation to end no later than ~~9 PM~~ **8 PM** (normal retail hours) daily. **MODIFIED BY HEARING OFFICER**
6. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
7. **Applicant shall return to the Hearing Officer for review of compliance with conditions of approval within six (6) months. The timing for six month review period to commence when the business is in full operation. Advise Community Development staff when in full business operation. If the full business activity is not initiated within one year the use permit will lapse. ADDED BY HEARING OFFICER**

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**ANNOUNCEMENTS**

- Mr. Abrahamson noted that October is National Planning Month and, planning ahead, there will be related events to be announced at a later time.
- The next Hearing Officer public hearing will be held on Tuesday, September 1, 2015 at 5:00 PM with a study session scheduled for 4:30 PM.

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With no further business, the public hearing adjourned at 6:15 PM.

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Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



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Steve Abrahamson, Principal Planner  
for Vanessa MacDonald, Hearing Officer  
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